

Memorandum

ECC Agenda Item II.
September 21, 2010

To : ECC Members

Date : August 26, 2010

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From : Spencer Walker, Senior Legal Counsel
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Subject : Introduction to the Bagley-Keene Open Meeting Act

In your Reference Materials (Section VIII), California Board of Accountancy staff have provided a copy of the Department of Consumer Affairs' (DCA) "Guide to the Bagley-Keene Open Meeting Act (Including Amendments through January 1, 2010)" prepared by the DCA's Division of Legal Affairs. This guide provides both an overview to the act and the full text of the Bagley-Keene Open Meeting Act.

The purpose of the Bagley-Keene Open Meeting Act is to facilitate accountability and transparency of government activities and protect the rights of the citizens to participate in State government deliberations.

At the meeting, I will provide Ethics Curriculum Committee members with an overview of the Bagley-Keene Open Meeting Act, and will be available to answer any questions members may have.

To assist in the overview process, attached to this memorandum is a document titled "Bagley-Keene Open Meeting Act, Top Ten Rules (January 2009)." This document has been prepared by DCA's Division of Legal Affairs for use at all new DCA board member orientations. It highlights the key components of the Bagley-Keene Open Meeting Act as it pertains to business conducted by boards and committees.

Attachment

**BAGLEY-KEENE OPEN MEETING ACT
TOP TEN RULES
(January 2009)**

[NOTE: GC § = Government Code Section; AG = Opinions of the California Attorney General.]

1. All meetings are public. (GC §11123.)
2. Meetings must be noticed 10 calendar days in advance—including posting on the Internet. (GC §11125(a).)
3. Agenda required—must include a description of specific items to be discussed (GC §§ 11125 & 11125.1).
 - a. No item may be added to the agenda unless it meets criteria for an emergency. (GC §11125(b).)
4. Meeting is “gathering” of a majority of the board or a majority of a committee of 3 or more persons where board business will be discussed. Includes telephone & e-mail communications. (GC § 11122.5; Stockton Newspapers Inc. v. Members of the Redevelopment Agency of the City of Stockton (1985) 171 Cal.App.3d 95.)
5. Law applies to committees, subcommittees, and task forces that consist of 3 or more persons (includes all persons whether or not they are board members). (GC §11121)
6. Public comment must be allowed on agenda items before or during discussion of the items and before a vote, unless: (GC §11125.7.)
 - a. The public was provided an opportunity to comment at a previous committee meeting of the board. If the item has been substantially changed, another opportunity for comment must be provided.
 - b. The subject matter is appropriate for closed session.
7. Closed sessions (GC §11126.) At least one staff member must be present to record topics discussed and decisions made. (GC § 11126.1).

Closed session allowed:

- a. Discuss and vote on disciplinary matters under the Administrative Procedure Act (APA). (subd. (c)(3).)
- b. Prepare, approve or grade examinations. (subd. (c)(1).)

- c. Pending litigation. (subd. (e)(1).)
- d. Appointment, employment, or dismissal of executive officer (EO) unless EO requests such action to be held in public. (subd. (a), (b).)

No closed session allowed for:

- a. Election of board officers. (68 AG 65.)
 - b. Discussion of controversial regulations or issues.
- 8. No secret ballots or votes except mail votes on APA enforcement matters. (68 AG 65; GC §11526.)
 - 9. No proxy votes. (68 AG 65.)
 - 10. Meetings by teleconferencing (GC §11123.)
 - a. Suitable audio or video must be audible to those present at designated location(s). (subd. (b)(1)(B).)
 - b. Notice and agenda required. (subd. (b)(1)(A).)
 - c. Every location open to the public and at least one member of board physically present at the specified location. All members must attend at a public location. (subds. (b)(1) (C), and (F).)
 - e. Rollcall vote required. (subd. (b)(1)(D).)
 - f. Emergency meeting closed sessions not allowed. (subd. (b)(1)(E).)

Reference: January 2009 "Public Meetings" Memorandum & Attached
Guide to the Bagley-Keene Open Meeting Act
http://www.dca.ca.gov/r_r/bagleykeene_meetingact.pdf